

BEFORE THE PERSONNEL APPEALS BOARD  
STATE OF WASHINGTON

MIKE REUTIMANN,  
Appellant,  
v.  
UNIVERSITY OF WASHINGTON,  
Respondent.

) Case No. DISM-04-0054  
)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD  
)  
)  
)  
)  
)

**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member. The hearing was held in Conference Room 348 in the South Campus Center at the University of Washington, Seattle, Washington, on February 1 and 2, 2005.

**1.2 Appearances.** Appellant Mike Reutimann was present and appeared *pro se*. Jeffrey Davis, Assistant Attorney General, represented Respondent University of Washington.

**1.3 Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for just cause, including but not limited to violation of published University policy and of the State Ethics Act, insubordination, and mistreatment and abuse of co-workers.

## II. FINDINGS OF FACT

2.1 Appellant was an Instrument Maker III in the Department of Physics, and a permanent employee for Respondent University of Washington (UW). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal on May 19, 2004.

2.2 Appellant began working as an Instrument Maker for the Physics Department in November 1992. In July 1998, Appellant promoted into the Instrument Maker Lead position and reported to Instrument Maker Supervisor John Roze. In July 1999, Linda Nelson became the Administrator for the Department of Physics. In October 2000, Michael Vinton, Program Operations Manager for the Instrument Shop became Appellant's supervisor, and Mr. Roze subsequently retired. In March 2002, Appellant's lead position was eliminated due to a good faith reorganization. Appellant appealed his reduction-in-force (RIF) to the Personnel Appeals Board, and the Board affirmed the University's RIF action. Reutimann v. University of Washington, PAB No. RIF-02-0004 (2002).

2.3 At the time of Appellant's dismissal, he was an Instrument Maker III. Appellant's duties and responsibilities included fabricating parts based on designs provided by clients, including various departments of the University. As an instrument maker/machinist, Appellant was required to operate instrument-making machinery and use an office computer.

2.4 Appellant received prior counseling for the following:

- On November 29, 2000, Michael Vinton, Appellant's supervisor, counseled Appellant regarding a violation of State Ethics Laws regarding Appellant's offer to fabricate parts independently of the Physics Instrument Shop and for a lower bid. As a follow-up, Mr. Vinton

provided Appellant with a copy of State Ethics Board rules, WAC 292-11—010 through -060.

- On October 1, 2003, and October 13, 2003, Mr. Vinton verbally counseled Appellant for unprofessional behavior that included use of an inappropriately loud voice, which became excessively argumentative in the course of discussions regarding workplace policy and procedures.
- On January 20, 2004, Mr. Vinton counseled Appellant verbally and in writing regarding unprofessional behavior regarding Appellant's hostile, inappropriate, and unprofessional tone in emails sent to his supervisor.

2.5 In 2002, Appellant was placed on Medical Verification for reporting sick leave; however, after Appellant corrected the issues regarding his sick leave reporting, he was no longer required to provide Medical Verification.

2.6 The University of Washington has adopted Administrative Policy 47.2, Personal Use of University Facilities, Computers, and Equipment by University Employees. All University employees receive annual emails from the Provost's Office reminding them of policies regarding use of state resources. Policy 47.2 strictly prohibits use of University property for "private financial gain" and states that such use may also be a violation of the state's ethics law. Subsection 3, Non-University Activity states, in relevant part:

a. Prohibited Use of Resources

University resources, including facilities, computers, and equipment, may not be used for the following purposes:

- Conducting an outside business or private employment.
- Supporting, promoting, or soliciting for an outside organization or group unless otherwise provided by law and University policy.

...

- Advertising and selling for commercial purposes.

In addition, WAC 292-110-010 (6) prohibits state employees from using computers for private gain, to conduct a business, or assist a non-profit organization. However, the WAC provision does allow for *de minimus* personal use.

2.7 After Appellant's supervisor discovered several non-work related files on Appellant's work computer, an internal audit revealed a number of files related to Appellant's rental business, his interest in a limited liability corporation entitled "245 Tacoma, LLC," and his participation in the "Swiss Ski Club, Inc." The internal review also showed that Appellant conducted outside business through his UW email account. In addition, Appellant's co-workers in the instrument shop received numerous personal calls for Appellant during normal working hours.

2.8 In the fall of 2003, Appellant became increasingly hostile toward his supervisor, Mike Vinton. On February 24, 2004, Mr. Vinton answered a personal telephone call for Appellant. When Mr. Vinton delivered the telephone message to Appellant, he noticed the Mitsubishi machine Appellant was operating made excessive vibrations and "chatter," which indicated the machine speed needed to be reduced. Mr. Vinton expressed concern because the machine spindle had recently been rebuilt. In response, Appellant became defensive and subsequently walked over to where Mr. Vinton was working to confront him.

1 2.9 Appellant's co-workers, Ted Ellis, Ron Musgrave, and Jim Greenwell, credibly testified that  
2 Appellant's demeanor toward Mr. Vinton was angry, aggressive, and loud, and that when Appellant  
3 approached Mr. Vinton on February 24, 2004, he showed visible signs of anger, including redness  
4 and bulging veins in his neck. Appellant's co-workers further stated Appellant made derogatory  
5 remarks to Mr. Vinton, attacking his character and abilities, and that Mr. Vinton responded to  
6 Appellant in a calm and professional manner. Mr. Vinton then offered to order different tooling to  
7 better assist Appellant with his duties, and Appellant responded by stating, "you have your head up  
8 your ass and you must be sniffing glue because we do not use 5/16 end mills for cutting o-ring  
9 grooves."

10  
11  
12 2.10 Appellant denied directing the statement at Mr. Vinton; rather, he stated he used the word  
13 "I," referring to himself, instead of Mr. Vinton. However, we find no reason to disbelieve the  
14 credible testimony of Mr. Musgrave and Mr. Greenwell that Appellant made the remarks to Mr.  
15 Vinton. Based on a preponderance of the credible testimony, we find Appellant made the  
16 inappropriate comment to his supervisor.

17  
18 2.11 Ms. Nelson, Appellant's appointing authority, testified that she considered Appellant's  
19 misuse of his UW computer for private business a very serious offense. In addition, Ms. Nelson  
20 became concerned for the safety of staff due to the escalation of Appellant's unprofessional behavior  
21 toward his supervisor. Ms. Nelson discussed her concerns with David Boulware, Chair for the  
22 Department of Physics. On March 29, 2004, Chair Boulware wrote a memo to Ronald S. Irving,  
23 Divisional Dean, Natural Sciences, outlining his recommendation for Appellant's dismissal from his  
24 Instrument Maker III position.  
25  
26

1  
2 2.12 By letter dated April 20, 2004, Dean Irving notified Appellant of his dismissal for just cause,  
3 including but not limited to violation of published University policy and of the State Ethics Act,  
4 insubordination, and mistreatment and abuse of co-workers. Dean Irving considered Chair  
5 Boulware's memorandum recommending dismissal, as well as Appellant's written response dated  
6 April 16, 2004, and ultimately determined dismissal was the appropriate action.  
7

### 8 9 **III. ARGUMENTS OF THE PARTIES**

10  
11 3.1 Respondent argues the evidence clearly shows Appellant used his University computer for  
12 private business interests. Respondent argues Appellant was aware of the University's policy  
13 regarding use of state resources and received annual emails from the Provost's Office outlining the  
14 prohibited use of University computers for private financial gain, as well as information related to  
15 violations of the State Ethics Board. Further, Respondent argues Appellant was insubordinate and  
16 mistreated his supervisor and co-workers when he engaged in increasingly hostile behavior toward  
17 his supervisor in the presence of other employees. Respondent argues Appellant's abusive behavior  
18 toward his supervisor escalated, and the department became concerned about the safety of the  
19 Instrument Shop employees. Therefore, Respondent argues termination is the appropriate sanction.  
20

21 3.2 Appellant does not dispute the charges outlined in the disciplinary letter. Rather, Appellant  
22 argues the level of discipline is excessively harsh. Appellant further argues he was subjected to a  
23 hostile work environment and was singled out and retaliated against by management since Ms.  
24 Nelson assumed the administrative responsibilities of the Physics Department. Appellant asserts  
25 the University eliminated his lead position yet created a shop manager position with similar duties  
26 for Mr. Vinton. Appellant also asserts he was inequitably required to be on medical verification.

1 Appellant contends that his personal use of his work computer was not excessive and did not  
2 interfere with his job performance. Appellant further contends that others in the shop frequently  
3 used their computers for personal reasons, such as Internet use during breaks, but that he was the  
4 only employee disciplined and asserts he was essentially discriminated against and harassed by  
5 management. Appellant argues he was a long term, loyal employee with excellent productivity and  
6 that his termination was unfair and unwarranted.

#### 9 IV. CONCLUSIONS OF LAW

11 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

13 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
14 the charges upon which the action was initiated by proving by a preponderance of the credible  
15 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
16 sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-  
17 240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

19 4.3 Willful violation of published employing agency or institution or Personnel Resources  
20 Board rules or regulations is established by facts showing the existence and publication of the rules  
21 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
22 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

1 4.4 Respondent has proven by a preponderance of the credible evidence that Appellant violated  
2 the University's Administrative Policy 47.2, Personal Use of University Facilities, Computers, and  
3 Equipment by University Employees, when he used his UW computer to conduct private business.

4  
5 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
6 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
7 Dep't of Social & Health Services, PAB No. D94-025 (1995).

8  
9 4.6 Mistreatment or abuse of fellow workers or members of the public is established when it is  
10 shown that the employee wrongfully or unreasonably treats another by word or deed. Johnson v.  
11 Lower Columbia College, PAB No. D93-077 (1994).

12  
13 4.7 Respondent has proven by a preponderance of the credible testimony presented that  
14 Appellant was insubordinate when he confronted his supervisor in a hostile verbal exchange in the  
15 presence of co-workers and that his actions were inappropriate, unprofessional, and abusive.

16  
17 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to  
18 the facts and circumstances, including the seriousness of the offenses. The penalty should not be  
19 disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence,  
20 to deter others from similar misconduct, and to maintain the integrity of the program. An action  
21 does not necessarily fail if one cause is not sustained unless the entire action depends on the  
22 unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

23  
24 4.9 In his defense, Appellant contends Ms. Nelson and Mr. Vinton subjected him to  
25 discriminatory behavior. However, Appellant failed to provide any evidence to support that either  
26



1 his co-worker or supervisor subjected him to discriminatory behavior because of religious opinions  
2 or affiliations, race, sex, age, disability, or veteran's status.

3  
4 4.10 Appellant also argues that he was harassed. However, in raising a defense of harassment, it  
5 is necessary to provide evidence of: 1) inconsistent or inequitable treatment that causes substantial  
6 emotional distress and serves no legitimate work purpose; 2) the Appellant taking appropriate steps  
7 or actions to alert management; and 3) a relationship between the inequitable treatment and the  
8 action or behavior of the Appellant.

9  
10 4.11 Appellant failed to provide any credible or persuasive evidence to support that either Ms.  
11 Nelson or Mr. Vinton exhibited harassing behavior toward him. Furthermore, Appellant failed to  
12 establish a relationship between his actions (i.e. use of the state computer for his personal business  
13 and his unprofessional and abusive behavior) and his supervisors' alleged harassment. Finally,  
14 Appellant provided no evidence that he communicated in any manner with anyone in his  
15 supervisory chain of command about any alleged harassment.

16  
17 4.12 The issues regarding Appellant's reduction-in-force were addressed at his appeal hearing on  
18 the RIF action, and the Board made a prior determination that the University properly eliminated  
19 Appellant's lead position due to a good faith reorganization. Further, the medical verification issue  
20 was resolved prior to the disciplinary action. In addition, UW policy allows for *de minimus* use of  
21 state resources. However, Appellant clearly used his work computer for activity related to his  
22 private business, and state policies explicitly prohibit employees from conducting a personal  
23 business, under any circumstances, on state computers. Finally, Appellant's unprofessional and  
24 abusive behavior toward his supervisor has in no way been mitigated.

1 4.13 Under the facts and circumstances of this case, including the seriousness of Appellant's  
2 misconduct, we conclude that Respondent has proven that the sanction of dismissal is appropriate  
3 and the appeal should be denied.  
4

5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mike Reutimann is denied.  
7

8 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.  
9

10 WASHINGTON STATE PERSONNEL APPEALS BOARD  
11  
12

13 \_\_\_\_\_  
14 Busse Nutley, Vice Chair

15 \_\_\_\_\_  
16 Gerald L. Morgen, Member  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26